

Decision 01-06-031 June 14, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into Rules, Orders, and Conditions Pertaining to the Holding Company Systems of Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and their Respective Holding Companies PG&E Corporation, Edison International, and Sempra Energy, respondents.

Investigation 01-04-002
(Filed April 3, 2001)

In the Matter of the Application of SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) for authorization to implement a plan of reorganization which will result in a holding company structure.

Application 87-05-007
(Filed May 6, 1987)

In the Matter of the Application of San Diego Gas & Electric Company (U 902-M) for Authorization to Implement a Plan of Reorganization Which Will Result in a Holding Company Structure.

Application 94-11-013
(Filed November 7, 1994)

In the Matter of the Application of Pacific Gas and Electric Company (U 39 M) for Authorization to Implement a Plan of Reorganization Which Will Result in a Holding Company Structure.

Application 95-10-024
(Filed October 20, 1995)

Joint Application of Pacific Enterprises, Enova Corporation, Mineral Energy Company, B Mineral Energy Sub and G Mineral Energy Sub for Approval of a Plan of Merger of Pacific Enterprises and Enova Corporation With and Into B Mineral Energy Sub ("Newco Pacific Sub") and G Mineral Energy Sub ("Newco Enova Sub"), the Wholly Owned Subsidiaries of a Newly Created Holding Company, Mineral Energy Company.

Application 96-10-038
(Filed October 30, 1996)

INTERIM OPINION DENYING PG&E CORPORATION'S REQUEST FOR REHEARING ON CATEGORIZATION

1. Summary

This decision denies PG&E Corporation's (PG&E Corp.) request for rehearing pursuant to Public Utilities Code Section 1701.1(a) of our decision¹ placing this proceeding in the "ratesetting" category. For the same reasons we made the decision to reject PG&E Corp.'s (and others') requests that this proceeding be presently recharacterized as "adjudicatory," we determine that the ratesetting category is appropriate at this time.

As we said in D.01-05-061, we will recategorize the proceeding as adjudicatory if our investigation results in a decision that there is probable cause to believe Respondents Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E), as well as their respective parent holding companies, PG&E Corp., Edison International (EIX), and Sempra Energy (Sempra) (collectively, Respondents) violated past decisions of this Commission or other law, and we opt to determine finally whether violations occurred and consider remedies. This procedure will protect PG&E Corp.'s (and other Respondents') due process rights. Moreover, the ratesetting category is appropriate where, as here, the proceeding presents a mix of policy and fact-finding issues for decision.

2. Background

This proceeding is an investigation into transactions between the three major California investor-owned utilities and their respective holding companies and affiliates. The Commission seeks to determine both whether these entities

¹ Decision (D.) 01-05-061, issued May 14, 2001.

engaged in conduct in the past that violates relevant statutes and Commission decisions that allowed them to establish holding companies,² and whether additional rules, conditions, or other changes are needed to protect ratepayers and the public from dangers of abuse of the holding company structure.

When this Order Instituting Investigation (OII) was initiated, it was characterized as a quasi-legislative proceeding. According to Public Utilities Code Section 1701(c)(1), “[q]uasi-legislative cases . . . are cases that establish policy, including, but not limited to, rulemakings and investigations which may establish rules affecting an entire industry.”

In D.01-05-061, the Commission recategorized the proceeding to the ratesetting category, stating,

We conclude that the investigation of Respondents’ prior actions would most appropriately be categorized as ratesetting. Because the ratesetting category is also used for mixed factual and policy proceedings, the ratesetting category is appropriate for that portion of this proceeding that inquires into possible changes in our holding company rules or related decisions. If we should find probable cause to believe that any Respondent violated our prior holding company decisions or other law, we will at that time recategorize the proceeding.³

² The holding company decisions for each Respondent are as follows:

PG&E - D.96-11-017, 69 CPUC2d 167 (November 6, 1996) (PG&E Authorization I); D.99-04-068, 194 P.U.R.4th 1 (April 22, 1999) (PG&E Authorization II);

SDG&E – D.95-05-021, 59 CPUC2d 697 (May 10, 1995) (SDG&E Authorization I); D.95-12-018, 62 CPUC2d 626 (December 6, 1995) (SDG&E Authorization II); and D.98-03-073, 184 P.U.R.4th 417 (March 26, 1998) (Sempra Merger Authorization); and

SCE – D.88-01-063, 27 CPUC2d 347 (January 28, 1998) (Edison Authorization).

³ D.01-05-061, *mimeo.*, at 5.

3. Discussion

PG&E Corp. claims that it would violate the categorization statute (Cal. Pub. Util. Code § 1701.1(a)) to categorize this proceeding as ratesetting. It claims this case does not involve the establishment of rates.

PG&E Corp. ignores the fact that the ratesetting category is both the catch-all category for proceedings that do not neatly fit into other categories, and that the category is appropriate for proceedings presenting issues both of policy and of fact. Moreover, PG&E fails to explain why its rights are not fully protected by our provision in D.01-05-061 for rescoping of this proceeding to adjudicatory if we find probable cause that PG&E Corp. (or other Respondents) have violated our holding company decisions or other law.

PG&E Corp. also fails to acknowledge that an alternate decision agreeing with the PG&E Corp. position that this proceeding is not appropriately categorized as ratesetting – albeit leaving the proceeding in the quasi-legislative category – failed to carry at the May 14, 2001 Commission meeting. Thus, the Commission has already considered, and rejected, PG&E Corp.’s fundamental argument here that the ratesetting category only involves cases directly involving the setting of rates.

PG&E Corp.’s request lacks merit and should be denied.

4. Waiver of Comment Period

In accordance with Public Utilities Code Section 311(g)(3), this is not a decision requiring that the Commission solicit comment from the parties because it relates to the categorization of the proceeding.

Findings of Fact

1. This proceeding will involve a mixed inquiry into issues of fact and policy.
2. The ratesetting categorization is appropriate for mixed fact/policy inquiries.

3. Dividing this proceeding into a ratesetting phase and, if necessary, an adjudicatory phase, will provide PG&E Corp. an opportunity for notice and a right to be heard should the Commission determine that there is probable cause to find it in violation of the Commission's holding company decisions or other applicable law.

Conclusions of Law

1. This Commission has discretion pursuant to Rule 6.1 of its Rules of Practice and Procedure to categorize this proceeding in the manner most suitable to the circumstances of this proceeding.

2. The investigatory phase of this proceeding is appropriately categorized as ratesetting. This phase of the proceeding will involve an inquiry into Respondents' past conduct and whether it complies with the Commission's holding company decisions or applicable law. It will also involve an inquiry into appropriate prospective changes in our decisions or other rules governing Respondents' holding company structure.

3. Ratesetting proceedings typically involve a mix of policy making and fact-finding relating to a particular public utility.

4. Proceedings that do not clearly fall within a single category, that involve a mix of policy making and fact-finding relating to a particular public utility or utilities, are generally best handled under the procedures applicable to ratesetting.

5. Categorizing the first phase of the proceeding as ratesetting does not violate PG&E Corp.'s due process rights.

INTERIM ORDER

IT IS ORDERED that PG&E Corporation's request for rehearing pursuant to Public Utilities Code Section 1701.1(a) of our Decision 01-05-061 is denied.

This order is effective today.

Dated June 14, 2001, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

RICHARD A. BILAS

GEOFFREY F. BROWN

Commissioners

Commissioner Carl W. Wood, being
necessarily absent, did not participate.